

1 **HEARING DATE AND TIME: February 3, 2011 at 9:45a.m. (Eastern Time)**

2 **LAW OFFICE OF MARTIN STANLEY**
3 Martin Louis Stanley [State Bar No. 102413]
4 Candace Brianne Lee [State Bar No. 266540]
5 137 Bay Street #2
6 Santa Monica, CA 90405
7 Telephone: (310) 399-2555
8 Facsimile: (310) 399-1190

9 Attorney for JUDD WIESJAHN & ANNALISA SAND

10 IN THE UNITED STATES BANKRUPTCY COURT
11 FOR THE SOUTHERN DISTRICT OF NEW YORK

12 In Re:

13 MOTORS LIQUIDATION COMPANY, et al.,
14 f/k/a GENERAL MOTORS CORP., et al.,

15 Debtors.

16 } CHAPTER 11

17 } Case No.: 09-50026

18 **MOTION OF JUDD WIESJAHN AND ANNALISA SAND TO FILE**
19 **LATE PROOF OF CLAIM, OR IN THE ALTERNATIVE,**
20 **TO AMEND INFORMAL PROOF OF CLAIM**
21

22 **I. INTRODUCTION**

23 Judd Wiesjahn and Annalisa Sand ("Wiesjahn/Sand") creditors and parties- in-interest in the
24 above-referenced bankruptcy cases, by and through their undersigned counsel, hereby move this Court
25 to enter an Order allowing them to file a late proof of claim, or in the alternative, to amend their
26 informal proof of claim on the grounds that they never received actual notice of the claim deadline. The
27 underlying claim is a wrongful death action, as evidenced by the wrongful death compliant attached
28

1 hereto as Exhibit A. On May 5, 2010, General Motors Corporation ("GM") was served with a true and
2 correct copy of Wiesjahn/Sand's complaint, and as such the debtor was aware of Wiesjahn/Sand's
3 complaint and the action filed against GM in the Superior Court of California, for the County of
4 Monterey as case number M 95923. (Attached hereto as Exhibit B is a true and correct copy of the proof
5 of service of summons on GM). Furthermore, following service of the summons and complaint, GM
6 mailed a Notice of Stay of Proceedings, which is attached hereto as Exhibit C, to:

8 "Martin Louis Stanley, Esq.
9 Law Office of Martin Stanley
10 137 Bay Street #2
11 Santa Monica, CA 90405
12 (310) 399-2555
Fax (310) 399-1190
(Attorneys for Plaintiffs)"

13 As such, GM knew that the plaintiffs' names were Annalisa Sand and Judd Wiesjahn, and that
14 the attorney for Wiesjahn/Sand in that case is Martin Louis Stanley and Jeffrey Lamb (at the time) of the
15 Law Office of Martin Stanley located at 137 Bay Street #2, Santa Monica, CA 90405, Telephone: 310-
16 399-2555, and Facsimile: 310-399-1190. However, General Motors Corporation and/or any of its
17 affiliates ("Initial Debtors") never provided any notice to Wiesjahn/Sand that they were required to
18 submit a Proof of Claim form by a certain date, nor were they provided with any initial notice from GM
19 under the ADR procedures with respect to their claim (collectively "Notices"). These notices were
20 never sent to Anna Lisa Sand at her address, Judd Wiesjahn, at his address, or even Martin Louis
21 Stanley at the above address. And Plaintiffs' counsel has no idea to whom these were sent or to whom
22 notice of GM's requirements was sent as nothing to either effect was ever received.

23 The Proof of Claim form or notice of any deadlines was not sent to Annalisa Sand or Judd
24 Wiesjahn to their personal address, or to Martin Stanley and/or The Law Office of Martin Stanley care
25 of Annalisa Sand or Judd Wiesjahn. Annalisa Sand and Judd Wiesjahn are not known recipients of mail
26
27
28

1 at "137 Bay Street Unit 2, Santa Monica, CA 90405," and there is no such thing as a "Stanley Martin
2 Law Office" at that address. (See Exhibits E). GM cannot refute these established ambiguities.
3 Respectfully, the court cannot presume delivery by the post office of an item placed in the mail under
4 the name of an unfamiliar address, no association to that address, and no care of language provided.
5 Accordingly, based upon these ambiguities, along with the fact there was no actual notice,
6 Wiesjahn/Sand cannot be charged with notice or actual knowledge of their proof of claim filing
7 deadline. *See In re Chess*, 268 B.R. 150, 156 (Bankr. W.D. Tenn. 2001) (there is a general presumption
8 among the courts "that an addressee receives a properly mailed item *when the sender presents proof that*
9 *the item was properly addressed, stamped, and sent through the United States mail[,]*" In support
10 thereof, Wiesjahn/Sand state as follows:

13 **II. BACKGROUND**

14 1) On August 8, 2008, Decedent lost her life as a result of injuries she suffered in an accident
15 while riding as a passenger in a 2006 Chevrolet HHR vehicle designed, manufactured, sold, or otherwise
16 placed into the stream of commerce by Motors Liquidation Company, f/k/a General Motors Corporation
17 ("GM").

19 2) On December 19, 2008, Wiesjahn/Sand filed an action in the Superior Court of California,
20 County of Monterey, Case Number M95923 in which Wiesjahn/Sand assert that, *inter alia*, that the
21 subject vehicle when being used in conjunction with the spare tire was susceptible to a loss of vehicle
22 control, and as such were not suitable for use under normal and foreseeable driving conditions and
23 lacked proper warnings regarding the danger, making the vehicle and tire defective by design,
24 manufacture, and lack of warnings. (Exhibit A)

26 3) Decedent, Rachael Love Wiesjahn, is survived by her parents Wiesjahn/Sand.

28 4) On May 5, 2009, General Motors Corporation was served with a true and correct copy of
Wiesjahn/Sand's complaint. (Exhibit A & B)

1 5) On June 1, 2009 General Motors Corporation and four of its affiliates (the "Initial Debtors")
2 filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Code").

3 5) On October 9, 2009, two additional affiliates of General Motors Corporation (the
4 "Realm/Encore Debtors") commenced voluntarily cases under Chapter 11 of the Bankruptcy Code.
5

6 7) On September 16, 2009, the Court entered an Order [Docket No. 4079] establishing
7 November 30, 2009 as the deadline for each person or entity to file a proof of claim in the Initial
8 Debtors' cases.

9 8) On December 2, 2009, the Court entered an Order [Docket No. 4586] establishing February 1,
10 2010 as the deadline for each person or entity to file a proof of claim in the Realm/Encore Debtors'
11 cases (except governmental units for which the Court set June 1, 2010 as the deadline to file proofs of
12 claim).
13

14 9) On February 23, 2010, the Court entered an Order pursuant to 11 U.S.C. § 105(a) and General
15 Order M-390 authorizing implementation of Alternative Dispute Procedures, including mandatory
16 mediation (the "ADR Procedures").
17

18 10) Wiesjahn is listed as a product liability claimant in the bankruptcy schedules filed by the
19 Debtors in this matter. (A true and correct copy of which is attached hereto as Exhibit D)
20

21 11) Sand is listed as a product liability claimant in the bankruptcy schedules filed by the Debtors
22 in this matter. (A true and correct copy of which is attached hereto as Exhibit E)

23 12) However Wiesjahn/Sand failed file the proof of claim form before the bar date due to: 1)
24 Motors Liquidation Company, f/k/a General Motors Corporation ("GM")' s failure to provide
25 Wiesjahn/Sand's counsel and Wiesjahn/Sand, as the creditors, any Proof of Claim form and/or any
26 notice that their forms had to be filed by a certain date; 2) GM's failure to provide separate notice to
27 Annalisa Sand and Judd Wiesjahn's personal address; 3) GM's failure to provide any notice or proof of
28

1 claim form to the Law Office of Martin Stanley care of Annalisa Sand and Judd Wiesjahn; and 4) GM's
2 failure to use the proper business name of Wiesjahn/Sand's counsel if it even mailed any notice or proof
3 of claim form to the Law Office of Martin Stanley. *See e.g. Bratton v. Yoder Co. (In re Yoder Co.)*, 758
4 F.2d 1114, 1118 (6th Cir. 1985) ("[t]estimony of non-receipt, standing alone, would be sufficient to
5 support a finding of non-receipt; such testimony is therefore sufficient to rebut the presumption of
6 receipt."); 11 U.S.C. § 342(g)(1) (notice is not effective where debtor fails to use the address supplied by
7 the creditor; notice is not effective until it is "brought to the attention" of the creditor). Notice was not
8 brought to Plaintiff's attention until Plaintiff's counsel recently received "Notice of Hearing to Consider
9 Approval of Debtors' Proposed Disclosure Statement With Respect to Debtors' Joint Chapter 11 Plan"
10 attached hereto as Exhibit F.
11

12
13 13) By this Motion, Wiesjahn/Sand respectfully request this Court to enter an order allowing
14 Wiesjahn/Sand to file a late proof of claim or, in the alternative, permitting Wiesjahn/Sand to amend
15 their informal proof claim.
16

17 III. JURISDICTION AND VENUE

18 14) This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
19 matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant
20 to 28 U.S.C. §§ 1408 and 1409.
21

22 15) The statutory predicates the relief requested herein is Section 105 of the Bankruptcy Code
23 and Fed. R. Bankr. Proc. 9006(b)(1).
24

25 //

26 //

27 //

28 //

IV. ARGUMENT

A. Judd Wiesjahn and Annalisa Sand Should be Permitted To File A Late Claim Pursuant to Bankruptcy Rule 9006(b)(1)

16) Pursuant to Fed. R. Bankr. Proc. 9006(b)(1), the Court may permit a claim to be filed after the bar date if the claimant's failure to comply with the deadline was the result of lack of actual notice by GM.

17) The lack of prejudice to the debtor or the interests of efficient judicial administration, combined with the good faith of the claimant "weigh strongly in favor of permitting the tardy claim." *Id.* at 398.

18) The Debtors will not suffer any prejudice if Wiesjahn/Sand's formal claim is allowed. The Debtors and all other parties in interest had knowledge of Wiesjahn/Sand's claim long before the bar date.

19) Wiesjahn/Sand are listed as products liability claimants on the bankruptcy schedules filed by GM. (Exhibit D & E). *See In re Ginther*, 2008 Bankr. LEXIS 1728 at 7 (Bankr. S.D. Tex. 2008) (late claim allowed where claim was listed on debtor's schedules as contingent, unliquidated and disputed). *In re Bruno Machinery Corp.*, 2007 U.S. Dist. LEXIS 51201 at *10 (N.D. N.Y. 2007) (late claim permitted because "Debtor had advance knowledge of the claim as they included it in Schedule F and [the creditor] had filed suit against it or this claim.")

20) As such, Wiesjahn/Sand had the right to assume that they would receive actual notice of relevant dates before their claims would be barred. *In re Dartmore Homes, Inc.*, 175 B.R. 659 (Bankr. N.D. Ill 1994) (finding Chapter 11 debtor, even creditors have right to assume they will receive notice of relevant dates before their claims are barred.)

1 21) In addition, Wiesjahn/Sand's claims will only have a negligible impact on the distributions
2 of the Debtor's remaining assets to unsecured creditors. Wiesjahn/Sand's claims represent only a very
3 tiny fraction of the billions of dollars of unsecured claims asserted against the Debtors in these cases.
4

5 22) In the alternative, Wiesjahn/Sand's failure to timely file a formal proof of claim before the
6 bar date was the result of excusable neglect and Wiesjahn/Sand have acted in good faith. It is clear that
7 the error in filing was not Wiesjahn/Sand and/or their counsel's error, but rather GM's error. As stated
8 above, GM 1) failed to provide Wiesjahn/Sand's counsel and/or Wiesjahn/Sand, as the creditors, any
9 Proof of Claim form and/or any notice that their forms had to be filed by a certain date; 2) GM's failed
10 to provide separate notice to Annalisa Sand and Judd Wiesjahn's personal address; 3) GM's failed to
11 provide any notice or proof of claim form to the Law Office of Martin Stanley care of Annalisa Sand
12 and Judd Wiesjahn; and 4) GM's failed to use the proper business name of Wiesjahn/Sand's counsel if it
13 even mailed any notice or proof of claim form to the Law Office of Martin Stanley. *See In re Any*
14 *Mountain, Inc.*, 2007 Bankr. LEXIS 712 at *2 (Bankr. N.D. Cal. 2007) (finding excusable neglect where
15 claimant's counsel misread bankruptcy court notice); *Bonner v. Adams (In re Adams)*, 734 F.2d 1094,
16 1103 (5th Cir. 1984) (holding "it is clear that one of the primary purposes of the list of creditors in the
17 schedule is to provide the court information as to persons entitled to notice," and as such an incorrectly
18 listed address not satisfy due process); *In re Hicks*, 184 BR. 954, 957 (Bankr. C.D. Cal. 1995) ("this
19 obligation to list all creditors' names and address is part of the debtor's duty of *full disclosure that is the*
20 *quid pro quo for fresh start* provided by the discharge); *In re Schepps Food Stores, Inc.*, 152 B.R. 136
21 (Bankr. S.D. Tex. 1993) (evidence that notice was never sent or that no one in the case received notice
22 does rebut presumption that proper notice was given in bankruptcy case.);
23
24
25
26

27 23) "It is well settled that if a debtor lists incorrectly the name or address of a creditor in the
28 required schedules, so as to cause the creditor not to receive notice, that creditor's debt has not been

1 ‘duly scheduled[.]’ *Adams*, 734 F.2d at 1098. “While the Bankruptcy Code provides no guidance as to
2 what is the proper address of a creditor, the law is clear that such an address must be one at which notice
3 or service would be reasonably calculated to comply with constitutional notions of due process.” *In re*
4 *Kleather*, 208 B.R. 406, 410 (Bankr. S.D. Ohio 1997). Likewise, when a court has promulgated a local
5 rule requiring a mailing matrix to accompany the statements and schedules, an incorrectly listed address
6 therein does not satisfy due process. *Adams*, 734 F.2d at 1103.

8 24) Furthermore, “if a creditor is not given reasonable notice of the bankruptcy case and the
9 relevant bar dates, its claim cannot be constitutionally discharged.” *See In re O’Shaughnessy*, 252 B.R.
10 722, 729 (Bankr. N.D. Ill. 2000) (quoting *In re Glenwood Med. Group, Ltd.*, 211 B.R. 282, 285 (Bankr.
11 N.D. =Ill. 1997)). Constitutional due process requires proper notice. *Mullane v. Cent. Hanover Bank &*
12 *Trust Co.*, 70 S. Ct. 652, 657 (1950) (“An elementary and fundamental requirement of due process in any
13 proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances,
14 to apprise interested parties of the pendency of the action and afford them an opportunity to present their
15 objections.”). “The burden of establishing that a creditor has received adequate notice rests with the
16 debtor.” *Massa v. Addona (In re Massa)*, 187 F.3d 292, 296 (2d Cir. 1999). Therefore, in order to
17 satisfy the elements of due process, a debtor’s schedules must contain accurate information concerning a
18 creditor’s address. *SouthTrust Bankcard Ctr. v. Curenton (In re Curenton)*, 205 B.R. 967, 970 (Bankr.
19 M.D. Ala. 1995); *see also Bonner v. Adams (In re Adams)*, 734 F.2d 1094, 1103 (5th Cir. 1984).

23 Thus, where as here “a debtor does not afford a creditor due process, either by failing to timely
24 schedule a creditor or by scheduling it incorrectly, the creditor’s right to object to the dischargeability of
25 a debt cannot be time barred under *Fed. R. Bankr. P.* 4007(c).” *Chanute Prod. Credit Ass’n v. Schicke*
26 *(In re Schicke)*, 290 B.R. 792, 800 (B.A.P. 10th Cir. 2003). For these reasons, Wiesjahn/Sand should be
27 permitted to file their claims late pursuant to Rule 9006(b)(1).
28

25) The determination of whether excusable neglect exists “is at bottom an equitable one.” *Pioneer Inv. Srvs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993). Among the circumstances that should be considered are the danger of prejudice to the debtor, the length of the delay and its potential impact on the proceedings, the reason for the delay and whether the movant acted in good faith. *Id.*

26) “[T]he enlargement of presented time periods under the ‘excusable neglect’ standard of Rule 9006(b)(1) is not limited to situations where the failure to timely file is due to circumstances beyond the control of the filer.” *Id.* at 391.

27) Courts are permitted, where appropriate, to allow late claims caused by “inadvertence, mistake or carelessness.” *Id.* at 388; F.R.B.P. §9006(b).

B. Wiesjahn/Sand Should Be Permitted To Amend Their Informal Proof of Claim

28) “Courts in the Second Circuit have long recognized the validity of informal proofs of claim.” *In re The Float, Inc.*, 163 B.R. 18, 20 (Bankr. N.D. N.Y. 1993).

29) An informal proof of claim is subject to amendment subsequent to the bar date. *In re Southhold Development Corp.*, 173 B.R. 63, 71 (E.D. N.Y. 1994)

30) An informal proof of claim should be recognized where the debtor is made aware of the “intent of [the creditor] to hold the estate liable.” *In re Rockville Orthopedic Associates, P.C.*, 365 B.R. 366 (Bankr. D. Conn. 2007); see also *In re Collins*, 2004 Bankr. LEXIS 2522 at *8 (Bankr. D. S.C. 2004) (finding informal proof of claim where debtor identified claim on schedules and claimant attended first meeting of creditors); *In re Hawaiian Airlines*, 2006 Bankr. LEXIS 2714 (Bankr. D. Haw. 2006) (letter from personal injury claimant’s attorney to the debtor constituted amendable informal proof of claim); *In re Judy Wood Publishing Corp.*, 289 B.R. 319, 322 (Bankr. E.D. Va. 2002) (informal proof of

1 claim existed because creditor was listed on the debtor's schedules and the debtor's mailing list of
2 creditors).

3 31) The filings identified above put all interested parties on notice of Wiesjahn/Sand's intent to
4 held GM liable and therefore, are more than adequate to constitute an informal proof of claim.
5

6 32) Consequently, Wiesjahn/Sand should be permitted to amend their informal claim by filing a
7 formal proof of claim form, which Plaintiffs' have prepared using the blank claims form on the Motors
8 Liquidation website at <https://www.motorsliquidation.com/ClaimsInformation.aspx>. (Attached hereto as
9 Exhibit G).
10

11 Dated: 12/9/10


13 MARTIN LOUIS STANLEY
14 CANDACE BRIANNE LEE
15 Attorney for PLAINTIFF
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

LAW OFFICE OF MARTIN STANLEY

Martin Louis Stanley [State Bar No. 102413]

Jeffrey R. Lamb [State Bar No. 257648]

137 Bay Street #2

Santa Monica, CA 90405

Telephone: (310)399-2555

Facsimile: (310)399-1190

Attorney for PLAINTIFFS JUDD WIESJAHN & ANNALISA SAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

JUDD WIESJAHN, ANNALISA SAND,

Case No.: M 95923

Plaintiffs,

vs.

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

CHRISTOPHER ROBIN TINDALL, WILLIAM
F. SIMMONS, MARK CHRISTOPHER
HUDSON, PAMELA CAROL HUDSON,
ALLEN DUARTE, and DOES 1 through 100,
inclusive

1. WRONGFUL DEATH

2. SURVIVAL ACTION

Defendants.

COMES NOW Plaintiff's Judd Wiesjahn and Annalisa Sand for causes of action against
Defendants, and each of them, complain and allege as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Plaintiffs were residents of Monterey, California. Plaintiff Judd Wiesjahn is the father of decedent Rachel Wiesjahn, and brings this suit in his capacity as an heir of decedent's estate. Plaintiff Analisa Sand is the mother of decedent Rachel Wiesjahn, and brings this suit in her capacity as an heir of decedent's estate.
2. Plaintiffs are informed and believe and thereon allege that Defendants CHRISTOPHER ROBIN TINDALL, MARK CHRISTOPHER HUDSON, PAMELA CAROL HUDSON, ALLEN DUARTE, are residents of Monterey County.

- 1 3. Plaintiffs are informed and believes and thereon alleges that Defendant William F. Simmons is a
2 resident of the State of Colorado.
- 3 4. Plaintiffs are informed and believe and thereon allege that Defendant General Motors Corporation, is
4 a Delaware Corporation headquartered in Detroit, Michigan, and doing business in the State of
5 California at all times relevant to this complaint.
- 6 5. Plaintiffs are informed and believe and thereon allege that Defendant Chevrolet is a subsidiary of
7 Defendant General Motors Corporation, at doing business in the State of California at all times
8 relevant to this complaint.
- 9 6. Plaintiffs are informed and believe and thereon allege that Defendant Bridgestone/Firestone North
10 America tire, LLC ("Firestone") is a Delaware for profit corporation that is and was qualified and
11 doing business in the State of California at all times relevant to this complaint.
- 12 7. Plaintiffs are informed and believe and thereon allege that Defendant Goodyear Tire and Rubber
13 Company, is a Delaware for profit corporation with headquarters in Akron, Ohio, that is and was
14 qualified and doing business in the State of California at all times relevant to this complaint.
- 15 8. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1
16 through 100. The true names and capacities of the defendants designated herein as DOES 1 through
17 100, inclusive, are unknown to Plaintiff, who therefore sue said defendants by such fictitious names.
18 Plaintiffs will seek leave of Court to amend this Complaint to show their true names and capacities
19 when such have been ascertained. Plaintiffs are informed and believes and thereon alleges that each
20 of the defendants designated herein as a DOE is legally responsible in some manner for events
21 referred to and has legally caused injury and damage to Plaintiff.
- 22 9. Plaintiffs are informed and believe and thereon allege that at all times relevant defendants, and each
23 of them, were the agents, servants, and/or employees of each of the remaining defendants and were
24 acting within purpose, course and/or employees of each of the remaining defendants and were acting
25 within the purpose, course and scope of said agency and/or employment and that each defendant,
26 when acting as a principal, was negligent in the selection, hiring, training or retention of each other
27 defendant as an agent, employee, assistant and consultant and that at times relevant, each defendant
28

1 has permitted, consented to, ratified and approved the acts, omissions and representations of each
2 and every other defendant.

3 10. On August 8, 2008, the Decedent Rachel Wiesjahn was a passenger in a vehicle driven by Defendant
4 Christopher Robin Tindall. That vehicle, a 2006 Chevrolet HHR, was traveling southbound on SR-1
5 at a location just south of the entrance to Pfeiffer Big Sur State Park.

6 11. Plaintiffs are informed and believe as follows: Defendant Tindall had been drinking alcoholic
7 beverages prior to the collision, and at the time he was driving the vehicle was determined by police
8 officers to be under the influence. Tindall then left the scene of the accident and turned himself into
9 police approximately 10 hours after the collision.

10 12. Decedent Rachel Wiesjahn exited the vehicle and was at a location south of the vehicle. At that
11 time, a Ford pickup truck driven by Defendant Mark Christopher Hudson, traveling southbound on
12 SR-1 approached and struck the Chevrolet.

13 13. Plaintiffs are informed and believe as follows: Defendant Mark Christopher Hudson had been
14 drinking and was under the influence.

15 14. Plaintiffs are informed and believe that Defendant Pamela Hudson was driving negligently following
16 behind Defendant Mark Christopher Hudson.

17 15. Plaintiffs are informed and believe as follows: After the Ford driven by Defendant Hudson struck the
18 Chevrolet, Defendant's ALLEN DUARTE and MARK CHRISTOPHER HUDSON towed the Ford
19 pickup truck from the scene to a dirt turnout approximately half a mile south of the scene of the
20 collision. Defendant MARK CHRISTOPHER HUDSON also fled the scene of the collision.

21 16. Plaintiffs are informed and believe that Defendant Pamela Hudson, negligently provided aid and,
22 assistance to the decedent at the scene of the accident and failed to summon paramedics in a timely
23 fashion.

24 17. Defendant Chevrolet, General Motors Corporation, Bridgestone/Firestone, Goodyear, and unknown
25 Doe defendants, were the corporation or other entities who designed, manufactured, sold, or
26 otherwise placed into the stream of commerce the Chevrolet HHR vehicle, and the spare tire in use
27 at the time of the accident which is the subject matter of this lawsuit.
28

1 18. At the time of the accident, the subject vehicle and tire were being used as intended and in a manner
2 reasonably foreseeable to the manufactures of the respective products.

3 19. At the time of the incident in question, the subject vehicle and spare tire was in substantially the
4 same condition as when it was designed, manufactured and sold or distributed. The vehicle and tire
5 were being used in a manner reasonably foreseeable to Defendants. The vehicle and tire were not
6 reasonably safe when being used in a foreseeable manner; but to the contrary were defective, and
7 unreasonably dangerous. The subject vehicle when being used in conjunction with the spare tire
8 were susceptible to a loss of vehicle control, and as such were not suitable for use under normal and
9 foreseeable driving conditions and lacked proper warnings regarding the danger.

10 20. The vehicle and tire were defective by design, manufacture, and lack of warnings.

11 21. The Chevrolet HHR was defective and unreasonably dangerous in that it was sold with a defective
12 spare tire; it was unreasonably dangerous in that the vehicle was uncontrollable under certain driving
13 conditions and in particular when being used with the spare tire; the vehicle was unstable, and had a
14 high propensity to lose control.

15 22. The subject vehicle and/or tire were defective and unreasonably dangerous in their design, and
16 manufacture of component parts including the subject tire.

17 23. The subject vehicle and/or tire were unreasonably dangerous and defective and there were safer,
18 reasonable alternative designs available that would have minimized the hazards.

19 24. Defendants Chevrolet, General Motors Corporation, Bridgestone/Firestone, Goodyear, and unknown
20 Doe defendants, were negligent or wanton in the design, manufacture, testing, sale, distribution,
21 warnings, and failure to recall the subject vehicle and tire.

22 25. Defendants Chevrolet, General Motors Corporation, Bridgestone/Firestone, Goodyear, and unknown
23 Doe defendants, undertook the duty to provide the vehicle and tire that are the subject of this
24 incident without defects, and to recall the subject vehicle and tire as a result of the defects alleged
25 herein.

26 26. As a proximate consequence of the defective nature of the vehicle and tire, the vehicle was
27 susceptible to lose control, and during normal use the vehicle and tire that are the subject of this
28 incident went out of control.